IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

CRL.A.No. 893 of 2002()

C.C.NO.343/93 OF JFCM-I, PUNALUR

APPELLANT: COMPLAINANT:

P. AJAYAKUMAR, DARSANA MANDIRAM,
ANCHAL, ALAYAMON MURI, ALAYAMON VILLAGE.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS: ACCUSED & STATE:

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1. A. SHAJI, OWNER OF THANAL HOTEL,
SALIM QUARTERS, ANCHAL TOWN,
ANCHAL VILLAGE.

2. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY ADV. SRI.ARUN VALENCHERY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.893 of 2002

Dated this the 21st day of November, 2007

JUDGMENT

The appellant is the complainant in C.C.No.343/93 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted. It is the case of the complainant that the accused borrowed a sum of Rs.30,000/- from the complainant on 15.3.1993 agreeing to repay the same within three months and when demanded the amount the accused issued the impugned cheques for Rs.25,000/- dated 15.6.1993 and Rs.5,000/- dated 5.7.1993 respectively and the same when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was replied to raising untenable contentions.

2. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2, Exts. P1 to P10 and C1. The defence examined DWs' 1 and 2 and got marked Exts. D1 to D7.

3. Although the disputed cheques and the admitted cheque i.e., Ext. P10 and the standard writings were sent for

examination by the handwriting expert, vide Ext. C1 report from the Assistant Director of Forensic Science Laboratory, Thiruvananthapuram the expert has expressed inability to identify the handwriting. No useful purpose was served by forwarding the disputed documents to the handwriting expert. It was found from the evidence adduced in the matter i.e., mainly the testimony of PW1, the complainant himself and from his admission that Exts. D1 and D2 pocket books and Ext. D3 receipt are in his handwriting, it was found established that the complainant is a person engaged in money lending business, lending amounts and receiving repayments on daily payments. Although he has denied that he is engaged in money lending business it was brought out clearly in the cross examination and from his admission as to his handwriting in Exts. D1 to D3 that he is a person engaged in money lending business which is mentioned as rolling finance. DW1 is a person who had availed the facility from the complainant and he has testified as to the nature of the transactions and he has also produced Ext. D5 pocket book given to him by the complainant which reflect the daily remittances. As noted by the court below, it can be seen

from the evidence adduced that the complainant is a person engaged in the above type of money lending and it appeared from the defence contentions that the practice is to obtain a signed blank cheque at the time of lending the amount and after collecting repayment on daily basis the cheques will be returned. PW1 has also admitted that during the pendency of the proceedings Rs.4,000/- in two instalments was paid by the accused and received by the complainant. The above statement by PW1 would clearly show that the transaction is in the nature as set up by the defence.

In the circumstances and in the light of the evidence adduced in the matter I find no reason to disturb the findings of the court below. The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl